RAJYA SABHA

Monday, the 9th March, 1992/
19 Phalguna, 1913 (Saka)

The House met at eleven of the clock, **Mr. Chairman** in the Chair.

ORAL ANSWERS TO QUESTIONS

दल-बदल विरोधी कानून में संशोधन

†*161 डा० रत्नाकर पाण्डेय :
श्री कमल मोरारका :

क्या विधि, न्याय और कंपनी कार्य मंत्री यह बताने की कृपा करेंगे कि :

(क) क्या दल-बदल विरोधी कानून में कोई संशोधन किये जाने की मांग है और

(ख) यदि हां, तो उसका ब्यौरा क्या है और इस पर सरकार की प्रतिक्रिया क्या है ?

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RANGARAJAN KUMARAMANGALAM): (a) and (b) There is no such specific demand. However, the implications of the Supreme Court judgement upholding the validity of the Tenth Schedule to the Constitution except para 7 thereof, including their observations in the judgement and the views expressed by the Presiding Officers' Conference in their meeting held on 11th February, 1992 and the views expressed in the meeting of the Speaker with the leaders of parliamentary parties and groups in Lok Sabha held on 5th February, 1992 are being examined by the Government.

†सभा में यह प्रश्न डा. रत्नाकर पाण्डेय द्वारा पूछा गया ।

डा. रत्नाकर पाण्डेय : माननीय सभापति जी, भारत की राजनीतिक व्यवस्था को सिद्धांतहीन स्वरूप से उत्पन्न स्थिति से बचाने के लिए और संसदीय प्रणाली को और शक्तिशाली बनाने के लिए, लोकतंत्र की मजबूती के लिए हमारे पूर्व प्रधानमन्त्री स्वर्गीय राजीव गांधी की सरकार ने 24 जनवरी, 1985 में लोकसभा में 52वां संविधान विधेयक संशोधन प्रस्तुत किया जिसे 30 जनवरी को लोकसभा तथा 31 जनवरी को राज्य सभा तथा 15 फरवरी को राष्ट्रपति की मंजूरी मिल गई है । मंत्री महोदय ने जो उत्तर दिया है उस संदर्भ को ध्यान में रखते हुए मैं आपके माध्यम से मंत्री जी से जानना चाहूंगा कि दल-बदल विरोधी कानून को लागू हुए, 7 वर्ष हो चुके हैं । क्या सरकार बताएगी कि इन 7 वर्षों में कानूनी विशेषज्ञों द्वारा इस दल-बदल कानून में संशोधन के लिए जो सुझाव मिले हैं, जिनका उल्लेख इन्होंने अपने उत्तर में किया है, वे क्या हैं ?

महोदय, मेरे प्रश्न का दूसरा भाग यह है कि सरकार को अपने व्यक्तिगत तजुर्बों के आधार पर इस विधेयक में क्या-क्या त्रुटियां महसूस हुई हैं और उनका विवरण क्या है ? क्या इन त्रुटियों को दूर करने के लिए पहले सरकार राजनीतिक दलों तथा कानूनी विशेषज्ञों से सलाह-मशविरा करने का विचार रखती है ?

क्या सरकार दल बदल विरोधी कानून में यह व्यवस्था करने का विचार करती है कि सांसदों और विधायकों को पार्टी हिवप होने की दशा में सिद्धान्तहीन गठबंधन हैं उसके टूटने का जो संबंध होता है, सदस्य उसमें पार्टी हिवप के खिलाफ वोट करना चाहता है तो उसकी सदस्यता समाप्त हो जाती है, क्या इस संबंध में सरकार पुनर्विचार करके कोई ठोस निर्णय करने का विचार कर रही है ?

SHRI RANGARAJAN KUMARAMANGALAM: Mr. Chairman, Sir, specific recommendations of particular

types of amendments have not been received by us from anybody. But, however, certain views have been expressed by the Presiding Officers in their Conference, and the Opposition leaders when they met with the Speaker have also expressed certain views. Those views are being taken into consideration by the Government. And we will take firm steps to solve this problem which is being caused by the declaration of Para 7 as unconstitutional by the Supreme Court. I can assure the hon. Member that the Government is very serious in taking steps and we would be coming with our proposals firmly.

With regard to the point whether we are going to discuss with the Opposition or not, the Speaker himself has held a meeting, and their views have been taken into consideration. And we would be taking it to the Cabinet and coming forward to the Parliament with our respective stand at that moment.

डा० रत्नाकर पाण्डेय : श्रीमन्, मेरा दूसरा पूरक प्रश्न यह है कि दल बदल विरोधी अधिनियम के अंतर्गत किसी सांसद या विधायक को सदन की सदस्यता से अयोग्य ठहराने के प्रश्न पर निर्णय लेने की कार्यवाही जो होगी वह संविधान के अनुच्छेद 122 के अनुसार सांसद तथा अनुच्छेद 212 के अनुसार राज्य विधान-मंडल की कार्यवाही समझी जाएगी । इस नियम में यह भी उपबंध है कि सदन की सदस्यता के अयोग्य ठहराए जाने का प्रश्न किसी भी प्रकार न्यायालय की अधिकार-सीमा में नहीं होगा । मैं जानना चाहता हूं आपके माध्यम से मंत्री महोदय से कि दल बदल कानून बनने के बाद कितने मामले उच्च न्यायालयों में दायर किए गए हैं? हाल ही में मध्य प्रदेश में विधान सभा के अध्यक्ष के निर्णय को उच्च न्यायालय में चुनौती दी गई । इससे उत्पन्न स्थिति को देखते हुए और भविष्य में लेजिस्लेचर और जुडिशियरी में टकराव को रोकने के लिए और इन दोनों संस्थाओं की गरिमा बनी रहे इसके लिए सरकार क्या प्रभावशाली कदम उठाने जा रही है और सरकार क्या किसी समय-बद्ध प्रस्ताव के साथ सामने आ सकेगी, इस पर मैं मंत्री महोदय का जवाब चाहता हूं...

श्री सभापति : आप बहुत लंबा सवाल कर देते हैं...

डा० रत्नाकर पाण्डेय: मैं तो मौखिक बोल सकता हूं, लेकिन मैं रैफरेंस इसलिए दे रहा हूं ताकि मंत्री महोदय को बाइ-लॉज का सारी नालेज हो जाए क्योंकि वे जाने माने वकील भी हैं...

श्री सभापति : वकीलों को कानून जाने की जरूरत नहीं होती ।...

डा० रत्नाकर पाण्डेय : तो क्या सरकार कोई समय-बद्ध कार्यक्रम के अंतर्गत इसके लिए कोई कदम उठाने जा रही है?

SHRI RANGARAJAN KUMARAMANGALAM: Sir, with regard to the number of cases that are pending in the Supreme Court. I do not have the exact figures with me. We will supply it to the hon. Member. But there are a large number of cases which have been filed and they have been batched together, and a judgment has been delivered which the hon. Member must be aware of where Para 7 dealing with excluding the jurisdiction of the courts, has been struck down, firstly, at the moment, on the point of procedure that under article 368(2), we should have got the ratification of the concerned Assemblies which was not obtained in this particular case. And with regard to the point whether, after we get the ratification, it will be valid or not, they have not expressed their view because on the question whether the jurisdiction of courts is a matter of basic structure, they have not voiced their views. So, they have left an opening there later also which, they said, is not necessary at the present moment to voice their views. With regard to the Govern-

ment taking steps, we are taking immediate steps. That is why, as I said earlier, we have already obtained the views of the Presiding Officers as well as the views of the Opposition leaders. And we have decided that we would take emergent steps to ensure that this confrontation which has been referred to does not become further aggravated. However, it is relevant at this moment to point out to the hon. Member through you that the Presiding Officers' conference as well as the opposition parties' conference together have decided that they would abide by the judgement of the Supreme Court and that decision has been communicated to all concerned.

डा० रत्नाकर पाण्डेय : मध्य प्रदेश विधान सभा के अध्यक्ष को उच्च न्यायालय में चुनौती दी गई थी...

श्री सभापति : वह मध्य प्रदेश का क्या जवाब देंगे ।

डा० रत्नाकर पाण्डेय : उत्पन्न स्थिति को देखते हुए जो लेजिस्लेचर और जुडिशियरी है...

श्री सभापति : मैं तीसरे सप्लीमेंटरी की परमिशन नहीं देता ।

डा० रत्नाकर पाण्डेय : जो निर्णय इस संबंध में सरकार लेगी उसकी कोई समय सीमा निर्धारित की गई है...

श्री सभापति : वह कह रहे हैं सब बातों पर विचार कर रहे हैं ।

SHRI RANGARAJAN KUMARAMANGALAM: This is not an issue where I think we should make it time-bound because this is rather delicate and does deal with certain fundamental matters, and it would not be fair for us to set a deadline date. We would definitely see that this matter is sorted out in total consensus with all political parties having one mined in the matter.

SHRI KAMAL MORARKA: Sir, I am afraid the answer of the Minister to the supplementary of my colleague Ratnakar Pandeyji is still not clear as to what the Government's view is. As we all know, this Act was unanimously acclaimed by all the parties in the past. But the way it has functioned in the last seven years, I think we all agree that it has caused more strain on the office of the presiding officer in the various Assemblies, and the Meghalaya Assembly case was a nadir to which we could reach. Today we are talking of confrontation between the judiciary and legislature. Let us all agree that this confrontation in the present case has been invited by us—by us means all the legislatures and everybody combined. I want to know from the Government (a) whether the Government will agree that clause 7 which has been held *ultra vires* will remain *ultra* vires. Or, are you going to reinforce it by a suitable enactment again because that will mean confrontation in the Supreme Court? (b) whether the Government has to, in its view, further amend this Act in a manner that not only legislature and Parliament should become stable but for the party system itself which is becoming unstable because of peculiar features of this Act. we would do something altogether to stabilise the entire functioning of Parliamentary democracy.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI K. VIJAYA BHASKARA REDDY): This Question has already been answered. The Supreme Court judgement has been accepted at the recent meeting held by the Speaker. It is accepted that we will accept the Supreme Court judgement. That means, para 7 is out. But we are thinking of avoiding a confrontation or bringing in further legislation. It has also been accepted that there should be an appeal on the order passed by the Speaker of the Assembly or Parliament. Now which is the authority which will go into

these things is a matter which we are trying to discuss with political parties and come to some decision. In that also, we must say a good word that the hon. Speaker of Lok Sabha has taken extreme pains. To avoid this confrontation, we have evolved certain formulations; we are going to put them into shape and come before Parliament very soon.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Let me deal with something more basic. Without exception, all the defections have been for the lure of office, not out of any principled politics, political ideology, call of conscience. The President has done well in suggesting that the Council of Ministers should be restricted. Our Prime Minister who symbolises politics of rectitude and high principles has also expressed similar views. We have exeprience in the past of even disqualified Members being sworn in as Ministers while their disqualification was on two very salutary and significant recommendations of Chavan Committee in this regard have been ignored. One is, to limit the size of the Council of Ministers. The second is, a defector,—in the same sense as used in the Tenth Schedule—should be debarred for a period of one year, or, till such period as he resigns and get himself re-elected,—from appointment to the office of Minister, including Deputy Minister, or Parliamentary Secretary, or Speaker, or Deputy Speaker, or to any post carrying salaries or allowances to be paid from the Consolidated Fund of India or of the State or from the....

श्री सभापति : आप प्रश्न कर लीजिये । यह तो सभी जानते हैं कि चव्हाण कमेटी की रिपोर्ट सब ने पढ़ रखी है ।

SHRI MURLIDHAR CHANDRAKANT BHANDARE:..... funds of Government undertakings in a public sector, in addition to the benefits to which he is entitled as a legislator. Will the Government include these two salutary recommendations in the amending Bill, as this would really remove the evil of defection from the body politic?

SHRI K. VIJAYA BHASKARA REDDY: Sir, when we come forward with the Bill before Parliament, all these things will be considered.

MR. CHAIRMAN: Will the recommendations of the Chavan Committee be considered?

SHRI K. VIJAYA BHASKARA REDDY: We will consider all these things.

श्री संघ प्रिय गौतम : माननीय सभापति जी, एक कहावत है कि चौबे जी गये छब्बे बनने, लेकिन दूबे बनकर रह गये ।

श्री सभापति : अपने तो चौबे ही रहें ।

श्री संघ प्रिय गौतम : सामान्यतः लोक सभा और विधान सभाओं में दलबदल था और उसकी चर्चा होती थी । लेकिन बड़े आश्चर्य की बात है कि राज्य सभा में भी दलबदल होने लगा है और ज्यादा आश्चर्य की बात तो यह है कि पाण्डेय जी की पार्टी ने उस दलबदल को स्वीकार भी कर लिया है । मैं आपके माध्यम से मंत्री महोदय से यह प्रश्न पूछना चाहता हूं कि क्या लोकतांत्रिक पद्धति के लिए निर्वाचित सदस्य द्वारा दल बदल करना जितना घातक है, क्या उस दल के द्वारा जो ऐसे सदस्य को स्वीकार करता है, यह लोकतांत्रिक पद्धति के लिए घातक नहीं है और यदि है तो क्या सरकार का ऐसा मन्तव्य है कि जो व्यक्ति दलबदल करता है, कोई भी पार्टी उसको अपने दल में स्वीकार नहीं करेगी और विशेष रूप से अगले अवसरों

पर जब कि सरकारों के पक्ष और विपक्ष में और बनने बिगड़ने में मतदान का अवसर हो ?

डा० रत्नाकर पाण्डेय : माननीय सभापति जी, जिस दल में एक ही सदस्य हो उसको तीन भागों में कैसे बांटा जाएगा, क्या इसको भी व्यवस्था करेंगे ?

SHRI RANGARAJAN KUMARAMANGALAM: Mr. Chairman, Sir, first of all, I think, it is important for us to understand what is defection and what is not defection. That is why, when the amendment to the Tenth Schedule was brought forward, very clearly, it has been laid down 'One-third of the strength of Parliamentary Party as well as a split in the party'. We cannot go against the basic concept of freedom of expression and the right to take decision. In a certain political party, there can be differences on political grounds and, therefore, a split occurs. A separate group is formed.

MR. CHAIRMAN: Don't give a lecture...

SHRI RANGARAJAN KUMARAMANGALAM: It is provided for. There is nothing wrong, fundamentally. I would really...

MR. CHAIRMAN: Under the law, it is not defection.

SHRI RANGARAJAN KUMARAMANGALAM: There is nothing wrong when, for political reasons, due to honest differences of opinion, people come out. That is democracy. Otherwise, the very concept of democracy will be defeated.

श्री संघ प्रिय गौतम : सभापति जी, मेरे प्रश्न का उत्तर नहीं आया है।

श्री सभापति : इनका कहना है कि क्या आप उस पार्टी पर भी कोई एक्शन लेंगे जो उसको एडमिट करती है ?

SHRI B. L. PANWAR: I would like to know from the hon. Minister whether, when bringing forward the amending Bill in regard to defection, the Government would consider this aspect also, to which Mr. Bhandare made a reference. At a particular period of time, one-third Members may come out and form a separate party. Then, in continuation of that, when somebody else joins this group of one-third, why should it be considered as defection? The persons coming out subsequently do not form another party. They join the same party formed by the group of one-third Members. Will the Government consider this aspect? Such a thing has happened in the past, during the tenure of Shri Rabi Ray.

MR. CHAIRMAN: The question is whether it will be considered as a continuing process?

SHRI K. VIJAYA BHASKARA REDDY: If they act within the law, we can do.

Making voting mandatory for citizens

*162. SHRI PRAMOD MAHAJAN: Will the Minister of LAW, JUSTICE AND COMPANY AFFAIRS be pleased to state:

(a) whether it is a fact that Government are proposing to make voting mandatory for citizens; and

(b) if so, what are the details thereof?

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RANGARAJAN KUMARAMANGALAM): (a) No, Sir.

(b) Does not arise.

श्री प्रमोद महाजन : सभापति जी, जनतंत्र में सरकारें लोगों के द्वारा चुनी जाती हैं । लेकिन हम देख रहे हैं कि हमारे देश में लगभग 50 प्रतिशत मतदाता मतदान के लिये आते ही नहीं हैं इसलिये स्वभाविकत: चुनी हुई सरकारों का जनता का जितना समर्थन प्राप्त होना